

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

SALLY SPINOSA,

Defendant.

21-CR-206 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has reviewed the binder of materials supplied by the law firm of Barasch McGarry Salzman & Penson (“BMSP”) on the grounds of attorney-client privilege. The Court holds as follows:

1. The documents with the following Bates numbers are properly produced to the Government, because they fall within the crime-fraud exception to the privilege: 0053, 0077–79, 1210, 1337–40, 1341, 1342–45, 1348, 1350, 1356, 1357, 1358, 1359, 1360, 1467, 1481, 1482, 1483, E005, E020, E021, E028–31, E035, E044, E053–54, E056, E072, E075, E078, E079, and E083. These documents principally evidence the law firm’s participation in submitting claims for compensation, or documentary support for such claims, on behalf of Ms. Spinoza. Some of these documents are duplicates.

2. The documents with the following Bates numbers are properly withheld, generally because the documents have no discernable substantive content or are irrelevant, but in all events, there is no basis to find that the crime-fraud exception applies to these documents: E014, E017, E019, E024–26, E032–34. Some of these documents are duplicates.

3. The document with Bates numbers 1520–30 is properly produced. It consists of a medical record that is not subject to attorney-client privilege.

4. The Court reserves judgment on the documents with the following Bates numbers: E004, E009, E011, E012, E038, E040, E041, E043, E048, E050, E051, E055, E060, E062, E063 and E086–87. These documents are internal memoranda within BMSP from June 2019, as firm personnel communicated about a request to the firm to furnish the firm's files with respect to Ms. Spinosa's representation to Ms. Spinosa's criminal defense law firm. These memoranda, being internal to the law firm, are not themselves attorney-client communications. Portions of these memoranda recount aspects of the firm's representation of Ms. Spinosa, including recounting earlier (e.g., 2016) communications between the firm and Ms. Spinosa. Some of these communications recount statements made by Ms. Spinosa to the firm, and/or by members of the firm to Ms. Spinosa, that would qualify for the crime-fraud exception. The Government is at liberty to submit a letter-memorandum explaining why such documents, or excerpts of them, are properly produced. Any such memorandum is due Friday, July 23, 2021. Any opposition from the defense is due Friday, July 30, 2021.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: July 15, 2021
New York, New York